Further the plaintiff is once again prevented from suing for damages by the operation of section 283 (i) (e) of the Civil Procedure Code which says that mere rights to sue for damages cannot be seized in execution. The right to sue for interest by way of damages is a mere right to sue for damages.

It was argued for the plaintiff that section 283 Civil Procedure Code only applied to damages in tort. I cannot agree. I see nothing to limit it to tort as opposed to contract. And there is nothing in the decision of the Court of Appeal in *R. G. Sabapathy Pillay* v. *Tham Hing Kwai*, (1935) F.M.S.L.R. 1; 4 M.L.J. 206 which suggests such limitation. It follows then that what the plaintiff bought when Kasi Chettiar's interest was auctioned did not include Kasi Chettiar's right to sue for damages.

The claim for damages, therefore, fails.

I give judgment for the plaintiff for items (a) and (c) as in paragraph 14 of the plaint, i.e. one-half of $34,000 less the sum standing to his credit in Court under Originating Summons No. 142 of 1934 with costs against the 1st defendant to the date of that payment into Court, viz., 1st April, 1937.

I dismiss the claims under items (b), (d), (e) and (g) of paragraph 14 of the plaint and order that the entire costs of this suit, except the costs provided for above, be borne by the plaintiff.

No costs are awarded to the 2nd defendant.

Judgment and Order in favour of Plaintiff accordingly.

[APPELLATE CRIMINAL JURISDICTION]

THOMAS, C.J.

July 29, 1937.

PUBLIC PROSECUTOR.....Appellant

against

B. M. SUNDRAM.....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 28 of 1937]

Second-hand Dealers Enactment (Cap. 86)—Licence under section 6 in the form in Third Schedule—Scope of licence—Licence invalid out of State where obtained.

S. was granted at Ipoh a licence under section 6 of the Second-hand Dealers Enactment (Cap. 86) in the form in the Third Schedule. Cap. 86 is a Federal Enactment.

Purporting to act under that licence he purchased second-hand goods in Kuala Selangor.

Held, the licence is limited to each individual State.

M. C. Hay, Deputy Legal Adviser, for Public Prosecutor.

J. Dunford Wood for respondent.

Cur. Adv. vult.

THOMAS, C.J.—This is an appeal by the Public Prosecutor from a decision of the Magistrate of Kuala Selangor acquitting the respondent one Sundram in respect of a charge under section 6 of the Second-hand Dealers Enactment (Cap. 86) punishable under section 9 of that Enactment.

The respondent had obtained two licences under section 6; the first was under the first schedule, which allowed him to stock and deal in second-hand goods, and the second under the third schedule which was limited to dealing in certain class of goods.

Section 6 says:—

> "No person unless exempted from this Enactment shall deal in second-hand goods except in accordance with the conditions of a licence issued under this Enactment and in the Form of the First Schedule hereto and in the place specified in such licence:
>
> Provided that any person who deals exclusively in the goods specified in the Second Schedule or any of them may be granted a licence in the Form in the Third Schedule.
>
> Section 7, 12, 13, 14 and 15 of this Enactment shall not apply to such person, nor need such licence specify his place of business, but every such licensee shall carry his licence on his person and shall produce the same for inspection at any time on demand of any Police Officer."

There are certain advantages in a licence under the third schedule because the holder is then exempted from complying with conditions contained in sections 7, 12, 13, 14 and 15 of the Enactment.

The point at issue between the Public Prosecutor and the respondent is what is the scope of a licence under the third schedule. It has been referred to as a roving licence, but the question is whether it is a licence to rove over the whole of the Federated Malay States or is limited to the State where it has been obtained. Attention has been drawn to section 3 which says:—

> "In each State the Chief Police Officer shall be the licensing officer but he may depute his powers in respect of any district of such State to any police officer not below the rank of Inspector".

It has been argued that the Chief Police Officer of one State could not possibly issue a licence which was to have effect in other States of the Federation.

But in the old days the post office used to issue postal stamps which were used throughout the Federated Malay States, and there are plenty of matters performed by an officer in one State which extend to the other States as well. Therefor I do not attach much importance to that argument.

Now, the Enactment, must be looked at as a whole. At the very beginning it is stated that it is an Enactment for the control and the licensing of dealers in second-hand goods. The Enactment proceeds to make provision as to licences, and then makes provision for the carrying out of the Enactment by rules. These rules are to be made by the Resident in each State. In fact no rules have been made. But there is nothing to prevent the making of a separate set of rules for each State.

Furthermore, the Resident of each State has the power to vary the second schedule. That would vary the licence granted in accordance with the third schedule. The second schedule might be varied in each of the four States. If then, one licence under the third schedule is to cover the four States, it would be a licence the terms of which might be different according to the four States and also subject to different rules. That would surely be an impossible situation.

But there another important provision contained in section 11. I do not think that this has been referred to in the course of argument. Section 11 provides that:—

> "In any State the Resident may at his discretion at any time cancel any licence issued or exemption made under this Enactment".

It would indeed be difficult to construe that section if the licence covered the whole of the four States. It might be that it could only be cancelled as to one State, and yet be in force in the other three.

In view of the matters which I have dealt with above, I am of the opinion that the licence is limited to each individual State. So, if a person wishes to carry on his second-hand business throughout the Federated Malay States, he must obtain a separate licence in each State or four licences altogether.

It has been argued that this is extremely inconvenient. It must, however, be remembered that the Enactment was passed in 1926, and at that time businesses of dealing in second-hand goods may not have attained the importance that they seem to have reached now. But that is a matter for the Legislature, and not for this Court to deal with.

I am satisfied that the learned Magistrate should have convicted. The judgment of acquittal is, therefore, altered to a judgment of conviction. Inasmuch as the object of the appeal was to obtain a judicial decision on the question raised, it is not necessary to pass more than a formal sentence. I accordingly impose a fine of one dollar.

Appeal allowed. Accused found guilty and sentenced to fine of $1.

[APPELLATE CRIMINAL JURISDICTION]

THOMAS, C.J.

July 29, 1937.

LOH CHAK WAN.....Appellant.

v.

PUBLIC PROSECUTOR.....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 33 of 1937]

Customs Enactment, 1936—section 114 (h) and (e)—Knowingly concerned in fraudulent attempt at evasion of Customs duty—Knowingly in possession of uncustomed goods—Onus—Explanation consistent with innocence.

Where the duty of giving an explanation is cast upon a defendant, and an explanation is given, which is consistent with innocence, the Court must consider whether it might reasonably be true although not convinced of its truth.

W. G. W. Hastings for appellant.

C. H. Whitton for the Public Prosecutor.

THOMAS, C.J.—This is an appeal from a conviction by a learned Magistrate of Kuala Lumpur under the Customs Enactment. The learned Magistrate was commendably brief in his judgment, and I will try to be equally brief.

The learned Magistrate says:—

> "I am of the opinion that Loh Chak Wan has not proved that he had no knowledge. In the ordinary course of business he should have been aware of the type of goods in which he was dealing. The letter 'Q' shows these goods were not quite ordinary. I believe that he was aware of the contents of Q".

The onus of proving that goods are not uncustomed is cast upon the defendant. It is the duty of the prosecution to prove that the defendant is concerned in any fraudulent evasion.

The defendant stated that he was a newcomer to the business, and had carried it on with regard to the goods in question (Tick Chu Sai Yau—a Chinese sauce said to contain more than 40 per cent. of sugar and so dutiable) in the same